

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
No. 1:16-cv-00137-MOC-DLH

DISABILITY RIGHTS NORTH )  
CAROLINA, )  
Plaintiff, )  
v. ) SETTLEMENT AGREEMENT  
RICHARD BRAJER, in his Official Capacity )  
as Secretary of the North Carolina Department )  
of Health and Human Services, )  
Defendant. )

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This Settlement Agreement ("Agreement") is made and entered into effective as of the date of execution by and between Plaintiff Disability Rights North Carolina and its managers, officers, directors, employees, and agents ("DRNC") and Defendant Richard Brajer, in his official capacity as Secretary of the North Carolina Department of Health and Human Services ("DHHS"). The foregoing parties are at times referred to herein collectively as "Parties" and individually as a "Party."

W I T N E S S E T H:

WHEREAS, DRNC is the Protection and Advocacy System for individuals with disabilities residing in North Carolina, and advocates for the rights of individuals with disabilities residing in North Carolina; and

WHEREAS, DHHS is an agency of the State of North Carolina with responsibility to administer certain public mental health, developmental disability and substance abuse services to certain individuals who have certain disabilities; and

WHEREAS, DHHS oversees fourteen State-operated healthcare facilities in North Carolina, including Black Mountain Neuro-Medical Treatment Center, located in Black Mountain, North Carolina; and

WHEREAS, DHHS promulgates policies applicable to the State-operated healthcare facilities in North Carolina; and

WHEREAS, on or about February 12, 2016, DRNC filed a civil lawsuit in the United States District Court for the Eastern District of North Carolina, which was styled as Case No. 5:16-cv-72, which lawsuit was subsequently transferred to the United States District Court for the Western District of North Carolina, Asheville Division, Case No. 1:16-cv-00137-MOC-DLH; and

WHEREAS, the Complaint and Answer and Affirmative Defenses raise issues pertaining to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 15001 *et seq.* and the Patient Safety and Quality Improvement Act (“PSQIA”), 42 U.S.C. §§299b-21 *et seq.*; and

WHEREAS, the Parties conducted discovery and participated in a mediation on November 14, 2016 before mediator M. Ann Anderson, Esq.; and

WHEREAS, the Parties recognize that this case involves factual and legal issues that may take a prolonged time to fully litigate and resolve, and further recognize that continued litigation could be an expensive, lengthy, and time-consuming matter; and

WHEREAS, the Parties share a mutual interest in resolving the disputed issues addressed in the Complaint and Answer and Affirmative Defenses, and wish to enter into a Settlement Agreement as set forth herein;

### AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, for agreed upon consideration, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I.     No Admission of Liability:** The settlement effected by this Agreement is a compromise of disputed claims, made to avoid the uncertainty and expense of litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, nonconformity, error or other deficiency on the part of any Party. Any such alleged liability, nonconformity, error or other deficiency is expressly denied by each respective Party. Nothing in this Agreement shall be construed as an acknowledgment, an admission, or evidence of liability of Defendant under the federal or state Constitution, or under any federal or state law, and this Agreement may not be used as evidence of liability in any other civil or criminal proceeding.

**II.     Actions by the Parties:**

1.     Within ninety (90) days, DHHS will review and/or revise the policies applicable to State Operated Healthcare Facilities which relate to PSQIA issues or the assertion of privileges and/or protections pursuant to PSQIA.

a.     The review and revision of policy by DHHS will include consideration of whether forms or template documents should be or will be recommended for use in gathering information.

b.     The review and revision of policy by DHHS will include a quality control review process providing that the DSOHF Patient Safety Team will review potentially privileged or confidential documents and/or materials prior to DHHS asserting the Patient Safety Work Product privilege/confidentiality under the PSQIA in response to DRNC record requests. DHHS will put this quality control review process into effect as soon as practicable.

2.     After DHHS reviews and/or revises the DSOHF policies as per Paragraph 1 above,

DHHS will provide copies of the PSQIA-related policies to DRNC. DHHS agrees that it will review and consider DRNC's input and comments on the policies. The Parties agree that DHHS shall not be bound to implement DRNC's comments, and that DHHS retains its full authority to promulgate and implement these policies.

3. Following implementation of the reviewed and/or revised policies, DHHS and/or the DSOHF Patient Safety Team will re-review the documents previously withheld as Patient Safety Work Product in this matter, as listed in the "Revised Log of Documents Withheld as Patient Safety Work Product," dated on or about September 2, 2016. This review will be done to verify that the documents withheld as Patient Safety Work Product are consistent with any revised policies.

4. DHHS agrees to pay a portion of DRNC's costs in this matter in the amount of Seven Hundred and Fifty Dollars and No Cents (\$750.00). DHHS's payment to DRNC shall be due within forty-five (45) days after DRNC dismisses the litigation. DRNC agrees to cooperate in providing DHHS with any required W2 or other document needed to facilitate the payment.

5. Other than the payment provided for in Paragraph 4, all attorney's fees, costs or other expenses related to the dispute and litigation shall be borne by each Party respectively, and no claim for such fees, costs or expenses shall be made.

6. DRNC agrees to dismiss the litigation within fifteen (15) days from the date that DHHS returns the fully-executed Agreement to DRNC.

### **III. Other Provisions:**

1. Each Party hereby releases the other, its current and former officials, employees, attorneys, agents and representatives, from any and all liability and causes of action that have arisen or may arise out of the dispute and litigation described herein, including the Complaint and Answer and Affirmative Defenses in Case No. 1:16-cv-00137-MOC-DLH. This Agreement shall not be deemed to bind DRNC in any future litigation regarding the PSQIA unrelated to the instant dispute and litigation.

2. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.

3. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provisions of this Agreement are held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

4. Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes the Agreement voluntarily as its own free act. Each Party further

acknowledges that it has conferred to the extent that it has deemed appropriate with legal counsel regarding this Agreement prior to its execution.

5. This Settlement Agreement may be executed in several counterparts, each of which shall be considered an original, so that all of which taken together shall constitute one and the same instrument. Facsimile signatures on this Settlement Agreement, whether transmitted by telecopier/facsimile or by email, shall be acceptable and deemed binding as if originals.

6. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties.

7. This Agreement shall be effective upon the occurrence of the complete execution of this Agreement.

THIS SETTLEMENT AGREEMENT agreed and executed by the Parties hereto:

**DISABILITY RIGHTS NORTH CAROLINA**

By: Vicki Smith (SEAL) Date: 11/30/16  
Vicki Smith  
Executive Director  
Disability Rights North Carolina

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

By: Rick Brajer (SEAL) Date: 12/8/16  
Rick Brajer  
Secretary  
North Carolina Department of Health and Human Services